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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Beehive Telephone Company, Inc.	)	CC Docket No. 97-237
Beehive Telephone, Inc. Nevada	)	
	)	Transmittal No. 6
Tariff F.C.C. No. 1	)	

OPPOSITION TO DIRECT CASE
OF BEEHIVE TELEPHONE COMPANY

Pursuant to the Order Designating Issues for Investigation in this proceeding,[1] AT&T Corp. ("AT&T") hereby files its Opposition to the Direct Case of Beehive Telephone Company, Inc. and Beehive Telephone, Inc. Nevada (collectively, "Beehive").

On July 22, 1997, Beehive filed its Transmittal No. 6, proposing to increase its premium local switching rate to $.0401 per minute from $.0348 per minute, and to decrease its premium local transport facility and termination rates, assertedly resulting in an overall decrease in access rates. In its petition to reject or suspend and investigate the proposed tariff changes, AT&T showed that Beehive's access rates have been grossly excessive since it terminated participation in the NECA traffic sensitive pool and began filing its own access

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1 Beehive Telephone Company, Inc. and Beehive Telephone, Inc. Nevada, Trans. No. 6, CC Docket No. 97-237, Order Designating Issues for Investigation, DA 97-2537 (rel. Dec. 2, 1997) ("Designation Order").

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tariff in 1994, at the same time that it entered into an arrangement with a "chat line" provider to share a portion of its access revenues in return for the provider undertaking to stimulate long distance calling to Beehive's exchanges. AT&T Petition at 2-3.

AT&T demonstrated in its petition that given its excessive rate levels in the past, Beehive's proposed rate reduction was clearly warranted, but that it was not clear that the reductions were sufficient to retarget its earnings on a re-price basis to the Commission's prescribed rate of return. Without further investigation based on detailed cost support, AT&T showed that the Commission and interested parties had no assurance that Transmittal No. 6 was not affected by the same incentives to manipulate costs and demand that were apparently responsible for Beehive's other inflated rates. Id. at 3-4. The Commission suspended Transmittal No. 6 for one day and initiated this investigation into whether Beehive's traffic sensitive local switching rate is based on its interstate cost of service since its last annual filing and related demand for the same period.[2]

In its Designation Order, the Commission ordered Beehive to file its direct case on December 12, 1997, and to provide detailed information to remedy several serious

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[2] Beehive Telephone Company, Inc. and Beehive Telephone, Inc. Nevada, Trans. No. 6, Suspension Order, DA 97-1674 (rel. Aug. 5, 1997), at para. 6.

deficiencies in the original cost support for its tariff filing. The Commission cautioned that "Beehive's provision of the information requested is necessary to determine whether the proposed rates are just and reasonable."[3]

Beehive has clearly failed to satisfy these directives, even after the Commission granted it an extension of time until December 15 in which to file its direct case.[4] The direct case that Beehive filed on that date was missing pages, contained no back-up data to support its costs for calendar years 1994, 1995 and 1996, no demand or dial equipment minute ("DEM") allocator data, and generally lacked any explanation supporting the calculations and changes in costs from year to year.

Beehive has also failed timely to remedy these deficiencies. On December 16, 1997, Beehive re-filed its direct case to include the pages that were not included in the December 15 version. At the close of business on December 17, in a transparent attempt to grant itself the extension of time which the Commission had previously denied, Beehive filed a "supplement" to its direct case which claimed to depict its July 1, 1997 revenue requirement based on combined 1995 and 1996 actual costs

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3 Designation Order at para. 8.

4 Beehive Telephone Company, Inc. and Beehive Telephone, Inc. Nevada, Trans. No. 6, CC Docket No. 97-237, Order, DA 97-2597 (rel. Dec. 12, 1997).

and a chart depicting DEM minutes by jurisdiction. Again, the filing was incomplete, and contained no back up data or explanation of how Beehive arrived at its calculations.

Although Beehive is subject to the Commission's streamlined filing rules promulgated to allow small carriers to avoid the burdens associated with filing annual access tariffs,[5] such small companies, because of their incumbent position, have the ability to abuse their market power, and the Commission has therefore stated specifically that the streamlined filing process is not intended to provide incentives for small companies to file access tariffs producing excessive returns.[6] The Commission retains the ability to require these carriers to submit detailed cost and demand data where it deems such information necessary to monitor a carrier's earnings.[7] Moreover, Beehive remains fully subject to Section 204 of the Act, which requires that once a tariff rate has been set for investigation, the carrier has the burden of proof to show that its proposed rates are just and reasonable. A carrier fails to meet its burden of proof under Section 204(a) if it does not provide the data that the Commission requests.

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5 See Regulation of Small Telephone Companies, 2 FCC Rcd 3811 (1987).

6 Id. at 3811.

7 Designation Order at para. 7, citing Section 61.39(c) of the Commission's Rules, 47 C.F.R. § 61.39(c).

In all respects, Beehive has abused the Commission's access filing process for small carriers by submitting incomplete, unsupported and late-filed data, and has consequently failed to meet its burden of proof to show that its proposed local switching rate is just and reasonable or that its access rate reductions are sufficient.[8] Even after unilaterally granting itself a de facto extension of time to file its direct case, it has blatantly disregarded the Commission's directive in the Designation Order to provide data supporting its rate changes. Accordingly, the Commission should exercise its authority to either prescribe a rate that is just and reasonable, as it warned it would do in the Designation Order,[9] or, alternatively, allow a partial authorization of the proposed rates in Transmittal No. 6 pursuant to Section 204(b) of the Act.[10]

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8 Beehive clearly recognized the consequences that could flow from its failure to comply with the Designation Order's requirements. Its counsel (who is also a member of Beehive's Board of Directors) cited the "serious nature of this proceeding" in the filing made by his law firm requesting an extension of time to file the detailed information required in a Section 204 proceeding. Motion for Extension of Time at 4 (filed Dec. 9, 1997). Even with the extension granted by the Commission, however, Beehive failed to file an adequate case.

9 Designation Order at para. 8.

10 See Annual 1987 Access Tariff Filings, 2 FCC Rcd 866, 880-81 (1986)(setting forth the legal basis for partial rate allowances pursuant to Section 204(b) of the Act.).

Beehive has failed to file any back up data supporting its costs and demand in its direct case. Because its December 15 and December 17 filings contain nothing more than a summary of various cost categories, Beehive has made it virtually impossible for the Commission or interested parties to verify the accuracy of its data. In particular, Beehive violated the Commission's specific directive to "provide an explanation supporting its calculation of demand and the DEM allocator," and an "explanation and data supporting any changes in costs and demand from year to year."[11]

This latter showing should have been central to Beehive's direct case, and without it, it has not proven that its proposed local switching rate or its overall access rate is in line with its demand trend. As AT&T pointed out in its petition against Transmittal No. 6, Beehive's demand was impacted significantly by an arrangement with a chat line provider in its territory under which Beehive since 1994 has shared its terminating access revenues with the provider in return for the provider stimulating calling into Beehive's territory. The revenue-sharing arrangement Beehive has with the chat line provider has been in effect during each calendar year covered by this investigation, yet Beehive has failed to explain the impact it had on its demand. In fact, Beehive

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[11] Designation Order at para. 7.

admitted in a separate complaint proceeding that traffic terminating to the chat line accounts for 95 percent of the traffic terminating in its territory.[12] For AT&T alone, Beehive's interstate usage jumped from approximately 76,000 minutes per year prior to the chat line beginning operations in mid-1994 to approximately two million minutes by the end of 1994, to 14 million minutes in 1995 and to over 15 million minutes in 1996. In light of this drastic upward adjustment in demand during the calendar years under review in this investigation, Beehive's failure to explain how it calculated its demand and DEM allocator or the change in demand from year to year is an egregious violation of the Commission's Designation Order, and makes it impossible to verify the reasonableness of Beehive's rates.

Beehive's failure to file any explanation or factors supporting its calculation of cost or demand complicates an analysis of what its access rate should be under a lawful rate of return. Even Beehive's deficient data admits, however, that its rate of return was over 62 percent in 1995 and almost 68 percent in 1996,[13] and that its combined rate of return for these two years was over

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12 AT&T Petition to Reject at 3, citing AT&T v. Beehive Telephone Co., Inc., et al, File No. E-97-04 (filed Oct. 29, 1996).

13 Direct Case, 1995 Cost and Revenue Table, 1996 Cost and Revenue Table.

21 percent.[14] Beehive has failed to provide sufficient information to determine whether or not its purported rate of return may have been even higher during those years, nor has it explained how it could mathematically combine two years of data showing an unlawful rate of return of over 60 percent to arrive at a combined return for the two years of 21 percent. In any case, the percentage rate of return Beehive has reported, on its face, is unlawful. Clearly, rates supported by historical data which allowed Beehive to earn an unlawful rate of return significantly above its authorized rate of 11.25 percent are unreasonable.[15]

At a minimum, Beehive has overcharged carriers for the local switching element, and its rate must be decreased to reflect a lawful rate of return. The Commission should be able to verify that Beehive has calculated a just and reasonable local switching rate by dividing Beehive's revenue requirement by its total chargeable demand. However, Beehive has not provided the necessary information to support such a calculation.

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[14] Supplement to Direct Case, 1995/96 Cost and Revenue Table.

[15] See Regulation of Small Telephone Companies, 2 FCC Rcd at 3813(". . . We emphasize that these carriers remain subject to the rate of return prescription in effect at the time that the rates are effective. Therefore, if the actual return of an exempted carrier exceeds the authorized return, the Commission reserves the right, at its discretion, to enforce its

(footnote continued on following page)

First, it has not shown how it derived its "combined" 1995 and 1996 cost and revenue data that it filed as a supplement to its direct case on December 17, and second, it has not provided any detail regarding its total chargeable demand other than to list its DEM minutes without explanation.

Even using the deficient data Beehive did include in its direct case, AT&T calculated a premium local switching rate which is lower than the rate Beehive proposed. AT&T adjusted Beehive's revenue requirement, based on an average of its individual data for 1995 and 1996, to reflect an 11.25 percent rate of return for its average net investment plus operating expenses and taxes to arrive at a figure of $736,415, as opposed to Beehive's revenue requirement of $1,383,477 which is nearly twice this amount because it is based on an excessive and unlawful purported rate of return of 21.37 percent. AT&T then calculated the total chargeable demand by using Beehive's total interstate DEM minutes, adjusted by AT&T's estimated share of its demand of 46.57 percent (based on AT&T's billed minutes as compared to total minutes) to arrive at total demand of 22.761 million minutes.

(footnote continued from previous page)

rate of return prescription by appropriate action, including the imposition of refunds.").

Dividing the revenue requirement by this demand equals a premium local switching rate of $.0324 per minute.[16]

Beehive's data is so deficient, however, that the Commission can have no assurance that the rate should not be even lower, and it should therefore either prescribe an even lower rate or allow Beehive to collect only an even lower portion of its proposed rate of $.0401. In either case, it is clear that Beehive has overcharged AT&T since its proposed rate went into effect on August 6, 1997, subject to investigation, and the Commission should also direct a refund to enforce its rate of return prescription.

It is also not clear that further reductions to Beehive's overall rate, which is presumably based on an inflated rate of return and its same unsupported cost and

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16 On December 17, 1997, Beehive filed an adjustment to its local switching rate to reflect the universal service fund ("USF") and access reform adjustments required of rate of return carriers. See Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Access Charge Reform, CC Docket No. 96-262; and Beehive Tariff F.C.C. No.1, Transmittal No. 8. Beehive's December 17 transmittal reflects a premium local switching rate of $.028 per minute. Although Beehive provided no supporting cost or demand data, its USF/access reform-adjusted rate is supposed to be based on its carrier's most recent revenue requirement and demand. Because Beehive has not demonstrated here that its revenue requirement and demand data are reasonable, its USF/access reform-adjusted rate is suspect, and is most likely still too high. AT&T will address Beehive's USF/access reform filing in its comments due on that filing on December 23, 1997.

demand data are not warranted. Accordingly, in order to re-target its overall earnings to the Commission's prescribed rate of return, it should consider lowering Beehive's overall access rate to reflect only a partial authorization of its total rate.

WHEREFORE, for the foregoing reasons, Beehive has failed to meet its burden of proof under Section 204 of the Act to demonstrate that its rates are just and reasonable, and the Commission should either prescribe a lower rate or allow Beehive only a partial authorization of its total rate which is just, fair and reasonable.

Respectfully submitted,

AT&T CORP.

By _____

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December 22, 1997

CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, do hereby certify that on this 22nd day of December, 1997, a copy of the foregoing "Opposition to Direct Case of Beehive Telephone Company" of AT&T Corp. was forwarded via facsimile transmission and was mailed by U.S. first class mail, postage prepaid, to the parties listed below.

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